

**DEPARTMENT OF LABOR AND TRAINING
DIVISION OF WORKFORCE REGULATION AND SAFETY
LABOR STANDARDS UNIT
PERFORMANCE AUDIT
JANUARY 2004**

**DEPARTMENT OF ADMINISTRATION
BUREAU OF AUDITS
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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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DEPARTMENT OF LABOR AND TRAINING
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EXECUTIVE SUMMARY

The Department needs to address the discrepancies in Rhode Island General Law 28-18 that sets forth a provision for the Industrial Homework Program and in the promulgated regulations of the Department that prohibits any industrial homework activity within the state.

Management needs to assess all of the employers who, as a result of an investigation, are required to pay wages to employee(s) and the administrative fees of 25 percent of wages to be paid and to perform follow-up procedures to monitor and enforce collection of administrative fees assessed.

Policies and procedures need to be developed for documenting the rationale or basis behind the varying percentage amounts charged to each violator and to ensure that violators of the "Prevailing Wage" do not bid on or be awarded work on the prevailing wage contracts within the state for a stipulated time period.

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January 22, 2004

Mr. Marvin D. Perry, Interim Director
Department of Labor and Training
1511 Pontiac Avenue
Cranston, RI 02920

Dear Mr. Perry:

We have completed our performance audit of the Department of Labor and Training, Division of Workforce Regulation and Safety, Labor Standards Unit as of July 2003. Our audit was conducted in accordance with Sections 35-7-3 and 35-7-4 of the Rhode Island General Laws.

The findings and recommendations included herein have been discussed with management and we have considered their comments in the preparation of the report. Management's response to our recommendations is included in this report.

In accordance with Section 35-7-4 of the Rhode Island General Laws, we will review the status of the Department of Labor and Training, Division of Workforce Regulation and Safety, Labor Standards Unit's corrective action plan within six months from the date of issue of this report.

Sincerely,

Frank J. Collaro, Jr., CFE, CGFM
Acting Chief, Bureau of Audits

FJC:pp

DEPARTMENT OF LABOR AND TRAINING
DIVISION OF WORKFORCE REGULATION AND SAFETY
LABOR STANDARDS UNIT
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INTRODUCTION

Objectives, Scope, and Methodology

We conducted a performance audit of the Department of Labor and Training, Division of Workforce Regulation and Safety, Labor Standards Unit. Our objectives were to determine if the Division of Workforce Regulation and Safety, Labor Standards Unit complied with state laws and regulations and was implementing its numerous programs that are intended to promote a work place that is safe and competitive, and has a fair environment to work or to conduct business in our state in an economical and efficient manner.

Our audit was made in accordance with the *Standards for the Professional Practice of Internal Auditing* issued by the Institute of Internal Auditors. In conducting our audit, we evaluated the practices and procedures used by the Division of Workforce Regulation and Safety, Labor Standards Unit in administering its operations. Our purpose was to identify practices and procedures that could be improved or made more efficient, and to identify any significant non-compliance with applicable state or federal laws. To achieve our objectives, we reviewed relevant policies and procedures, state laws and regulations, and applicable federal laws; interviewed responsible personnel; and performed tests of the records and such auditing procedures as we considered necessary in the circumstances.

The findings and recommendations included herein have been discussed with management and we have considered their comments in the preparation of our report. Section 35-7-4 (c) of the Rhode Island General Laws requires the auditee to respond in writing within 60 days to all recommendations made in the report. Management's response to our audit findings and recommendations were submitted on January 20, 2004, and are included in our report.

Background

The Labor Standards Unit enforces labor laws. It provides for worker protection in the areas of wages and hours, including but not limited to payment and collection of wages, minimum wages, and overtime provisions. The Unit also enforces laws regarding work permits on Sundays and holidays, child labor, parental and family leave, and industrial homework.

Within the Labor Standards Unit is the Prevailing Wage Section. All construction contractors who have been awarded a state or municipal construction contract valued at over \$1,000 shall pay their employees, on that contract job, according to the provisions of the "Prevailing Wage." The provisions mandated a specified set of hourly wages and fringe benefits to be paid to each worker based on his/her construction occupation. Employers found in violation of the provisions are assessed to pay any prevailing wages owed in arrears to employees, and to pay a stipulated penalty to the Unit.

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FINDINGS AND RECOMMENDATIONS

Industrial Homework Program

Rhode Island General Law 28-18 (RIGL) sets forth provisions of the Industrial Homework Program. Industrial homework means the processing in a residential building material, which has been furnished by an employer of any article or articles to be returned to the employer. Goods processing may include soldering, assembling, grinding, boxing, carding, and gluing, etc. The Chapter expressly states that its purpose is to provide strict control over and gradual elimination of the industrial homework within the state.

As part of its promulgated rules and regulations the Unit has one such regulation that prohibits any industrial homework activity within the state while RIGL 28-18 currently provides for such a program. Therefore an inconsistency exists between the law and the Unit's regulation.

The law provides for the licensing of manufacturers to issue homework and for the certification of the home workers themselves. Our interviews with management have disclosed that within at least the past twenty years, there have not been many applicants for these licenses and certificates.

Recommendations

1. Based on the facts that there are no prospective participants for the Industrial Homework Program within the state and the intent of the program is to have the gradual elimination of industrial homework within the state, management should consider having legislation introduced repealing RIGL 28-18 and make all industrial homework prohibited by law.

Management's Response: Partially accepted

2. If management desires that an Industrial Homework Program provision should remain intact, it should revise its promulgated regulation that forbids industrial homework activity to one that allows it according to the provisions of RIGL 28-18.

Management's Response: Accepted

Administrative Fees

The area of enforcement that the Unit dedicates most of its time and resources towards is: the receiving and the investigation of wage complaint cases and to determine if employers are in compliance with Chapter 28-14 of the RIGL's. According to RIGL 28-14-19, if, as a result of an investigation, it is determined that an employer is required to pay wages to employee(s), the employer shall also pay to the Unit an administrative fee of 25 percent of any payment to the employee(s). The law does not allow for any leeway on this assessment. Our review disclosed that the Unit frequently waives the administrative fee in these investigation cases and neither assesses nor bills the employers found in violation of the statute.

In addition, the Unit has no follow-up procedures to monitor and enforce collection of administrative fees assessed. The Unit takes no additional action if an administrative fee is assessed and billed to an employer and the employer fails to pay the fee. We discovered many long overdue fee assessments outstanding that were still unpaid as of our examination date. If it should become common knowledge within the business community that the Unit does not enforce the collection of this type of fee, then the employers found in violation may become less inclined to pay this assessment.

Recommendations

3. Assess and bill the 25 percent administrative fees to all employers who are in violation of the statute.

Management's Response: Accepted

4. Perform any follow-up collection procedures to monitor and enforce the administrative fee assessed on employers.

Management's Response: Accepted

Random Investigations/Inspections

The Unit also performs the functions of registering and inspecting contract shops. The inspections are to ensure that those shops have proper safety and sanitary conditions. Current procedures do not require random investigations be conducted as a means to enforce compliance.

Recommendation

5. Conduct random investigations of employers within the state to determine if those employers are in compliance with the various provisions of the labor laws and with the departmental regulations.

Management's Response: Accepted

Labor Laws Study

The Unit is charged with enforcing and implementing a wide array of provisions of the various Chapters within Titles 5, 71, 25 and 28 of the RIGL's. Some of these laws had been originally enacted as far back as 1904. It is reasonable to assume that at the time of enactment, the intended effects and the impacts of these laws were appropriate. However, the desired effects and impacts may not be applicable or reasonable at the present time given the natural tendency of change, over time, in the socioeconomic environment, labor climate, and workforce composition of the state. The Unit has never performed a comprehensive study of these laws to analyze and evaluate their current applicability and/or legitimacy.

Recommendation

6. Assemble a committee of individuals who represent the public and private interests throughout the state to study and evaluate the existing labor laws.

Management's Response: Accepted

Complaint Cases Referred to Outside Agencies

Occasionally, the Unit will begin investigating a complaint case and determine that it should be referred to the Office of the Attorney General. We noted that when the Unit refers a case to the Attorney General a significant period of time might pass before they are informed of the case's disposition. And, in most instances, the Unit is neither notified of the case's final disposition nor do they follow up on any of the cases they refer to the Attorney General's Office.

Recommendation

7. The Unit should monitor complaint cases that are referred to the Attorney General's Office.

Management's Response: Accepted

Financial Control Procedures

Our review of the financial control procedures disclosed that one individual is performing all aspects of the cash collection and the recording process within the Unit. This is a clear violation of the internal controls surrounding the receipt and recording of revenue.

Recommendation

8. Duties surrounding the case collection and the recording process within the Unit should be reassigned to segregate the various functions of these processes.

Management's Response: Accepted

Minimum Wage Act

In accordance with RIGL 28-12-6 the Director shall make administrative regulations to carry out the purpose of, and to prevent the circumvention or the evasion of the Minimum Wage Act, with respect to those occupations not covered under the Act, i.e., outside salespersons and apprentices. The administrative regulations may include defining the delimiting terms of the Act with respect to exactly which occupations are exempt, special or extra work and pay, overtime, etc., for the exempt occupations. To assist the Director in making these regulations, an advisory board is to be appointed by him or her. The Board is to be composed of one representative each of the employer and employees in the occupations affected and of one representative from the general public. We learned that there had been an advisory board in place at one time but that was many years ago. The Unit does not have any of the regulations in place regarding the provisions of RIGL 28-12-6.

Recommendation

9. Determine if the provisions of RIGL 28-12-6 are practical given the current labor climate and workforce composition of those occupations that are exempt from the Minimum Wage Act and either implement the provisions or have the legislation introduced to repeal the statute.

Management's Response: Accepted

Prevailing Wage Section

Violation/Complaint Case Hardcopy Case Files: We examined the case files to determine if they contained enough documentary evidence to support any conclusions as to whether a violation had occurred. We discovered that the case files did not contain a planning memo, a work program, nor were they indexed and bound. We found them to be disorganized, incomplete, and sometimes confusing. A disorderly case filing system may lend itself to documents being misplaced, misfiled, or lost.

We also noted that the documentation in the case files indicated that the investigations are not being conducted on a consistent basis. Of the cases we had examined, there were varying levels of documentation included in the individual case files. By not maintaining consistent documentation among the individual investigation case files, management cannot be certain that all of the required procedures were conducted in the individual investigations, nor can management begin to implement consistent investigation and documentation procedures under the current case file system.

Recommendations

10. The hard copy case files should contain a planning memo, work program, contain enough documentary evidence to support any conclusion and be indexed and bound.

Management's Response: Accepted

Recommendations – (Cont'd)

11. Ensure that all investigators are aware of the policies and procedures for investigating cases and the documentation required to be assembled for each case. Final approval of the investigations, which includes a final review of case files, should be included in the case file to ensure that all of the prescribed procedures and documents have been executed.

Management's Response: Accepted

Penalties Assessed

Our examination of the case files disclosed that all of the violators were assessed, and had paid a penalty. RIGL 37-13-14.1(b) stipulates that in addition to any payment of wages to employees, the employer is also required to pay a civil penalty in an amount equal to three times the total back wages owed to employees. The law further allows leeway on the actual penalty amount to be assessed by stating that due consideration shall be given to the size of the employer, the gravity of the violation, the employer's history of violations, and the overall employer's compliance and cooperation.

Our review of the case files disclosed that there were varying levels of penalties assessed to the violators. That is, the penalty based on certain percentage of wages found to be due. Most penalty amounts were the same as the total wages due—some were twice as much, some were 50 percent, and some of the penalties assessed were a flat rate dollar amount. The Unit is assessing the violators these varying levels of penalty amounts without documenting the rationale or the basis behind the amounts. The lack of such documentation may give the perception of unfair or biased treatment of the various violators by the Unit.

Recommendation

12. Document within each violation case file the rationale for the particular level of penalty assessed against the particular violator.

Management's Response: Accepted

Accrued Interest on Wages

RIGL 37-13-14.1(a) stipulates that when an employer is found in violation of the Prevailing Wage provisions and is directed to pay wages due to employees, that payment of interest at 12 percent per annum is also to be paid to those employees. Interest is to be accrued from the date of the underpayment to the date of payment. In 3 of the 21 case files we sampled interest paid to employees was calculated not up to the date of payment but up to five months prior to payment. In those cases, the employees did not receive all of the accrued interest due to them as prescribed by law.

Recommendation

13. Ensure that employers that are directed to pay wages due to employees also pay the interest that is accrued up to the date of payment.

Management's Response: Accepted

Violator Sanctions

In accordance with RIGL 37-13-14.1(d) and (e), any employer in violation of the prevailing wage provisions shall be ineligible to bid on or be awarded work on prevailing wage contracts within the state for a period of between 18 and 36 months, and that any pending bid awarded to such violator prior to the commencement of work shall be revoked. In addition, any employer found to have committed two or more willful violations in any 18-month period shall be ineligible to bid on or be awarded work on the prevailing wage contracts for a period of five years.

The Section is not implementing any measures to ensure that violators are being prevented from bidding on or being awarded the prevailing wage contract jobs within the state for the time periods stipulated within the provisions of the law.

The Prevailing Wage Section is the only Program within the state that has knowledge of such violations. If violation information is not distributed to the points where the violators enter into the contracts—typically state purchasing agencies and cities and towns, then there is no mechanism to prevent violators from entering into contracts.

Recommendation

14. Management should develop and implement procedures to ensure that violators of the prevailing wage provisions are prevented from bidding on or being awarded public works projects within the state for the time periods stipulated within the provisions of the law.

Management's Response: Accepted

Field Investigations Documentation

The Unit is responsible for enforcing the provisions of the “Prevailing Wage” and its major means of discovering prevailing wage violations is through the field investigation process. Our review of the Section’s “In-State Automobile Reimbursement” and “Accounting Reports” and its “Itemized Schedules of Travel” disclosed that the Section’s investigators do not routinely record the disposition of their investigations. The disposition of the investigation being whether the individual(s) interviewed were found in violation of any of the provisions or if they were found to be in compliance.

Documenting these items would aid management in its control over the investigation and the penalty assessment processes. Violation cases could then be traced directly to the initial contact with the violator during the course of the field investigation.

Recommendation

15. The Unit should include in its documentation of field investigations the disposition of each investigation.

Management's Response: Accepted



Donald L. Carcieri
Governor
Marvin D. Perry
Director

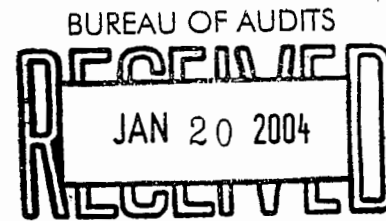
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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January 5, 2004



Mr. Frank J. Collaro, CFE, CGFM
Acting Chief
Bureau of Audits
Department of Administration
One Capitol Hill
Providence, RI 02908

Dear Mr. Collaro:

I am in receipt of the Labor Standards and Prevailing Wage Units Performance Audit dated November 12, 2003. Following is the response to said findings of the Labor Standards Unit as well as the recommendations:

LABOR STANDARDS SECTION

Industrial Homework Program:

Recommendation No. 1: Based on the facts that there are no prospective participants for the Industrial Homework Program within the state and the intent of the program is to have the gradual elimination of industrial homework within the state, management should consider having legislation introduced repealing RIGL 28-18 and make all industrial homework prohibited by law.

Recommendation No. 2: If management desires that an Industrial Homework Program provision should remain intact, it should revise its promulgated regulation that forbids industrial homework activity to one that allows it according to the provisions of RIGL 28-18.

Response: Partially accepted

The Labor Standards Program believes that the reason there are few participants for the Industrial Homework Program is because the Rules and Regulations relating to Industrial Homework clearly state that jewelry homework is prohibited. RIGL 28-18-3 duplicates the same language, but has exceptions where certificates and licenses can be obtained from the Director of Labor and Training, and goes on to explain what those exceptions are. If we become aware, through a complaint, the Examiners will investigate and attempt to resolve the situation.

Therefore, we believe that this law should be retained in order to maintain control over the activity in this regard, and that identical language should be added to this section in the Rules and Regulations for consistency.

Administrative Fees:

Recommendation No. 3: Assess and bill the 25% administrative fees to all employers who are in violation of the statute.

Recommendation No. 4: Perform any follow-up collection procedures to monitor and enforce the administrative fee assessed on employers.

Response: Accepted

The practice of waiving Administrative Fees has been discontinued, and all Examiners have been instructed to discontinue waiving Administrative Fees as a negotiating tool to collect wages. Labor Standards has recently proposed legislation which would increase the Administrative Fees of 25% to be increased by 10% for each subsequent violation, and to increase the 25% Administrative Fee if a hearing is required, to an Administrative Fee of not less than \$500 or 25%, whichever is greater, as well as require the employer to pay for any and all costs incurred as a result of said hearing.

With regard to follow-up procedures to monitor and enforce collection of the Administrative Fees assessed, the Labor Standards Program does send a letter to the employer requesting the Administrative Fee to be paid within a period of two weeks, and advising them that if it is not paid within that time, that it would then be referred to the DLT legal staff for collection.

Random Investigations/Inspections:

Recommendation No. 5: Conduct random investigations of employers within the state to determine if those employers are in compliance with the various provisions of the labor laws and with the departmental regulations.

Response: Accepted

Although the Department's position is that it is important to conduct random inspections of all contract shops, due to staff limitations, inspections are only permitted in cases where a complaint is made or a permit is returned as undeliverable at a designated address.

Labor Laws Study:

Recommendation 6: Assemble a committee of individuals who represent the public and private interests throughout the state to study and evaluate the existing labor laws.

Response: Accepted

The Labor Standards Program has recently submitted a legislative package of proposed legislation to the Office of the Governor. Said proposals contain our requests to either have language changed or request that a section be repealed in order to bring these respective laws into conformance with societal changes. Since we are aware of the need for changes and plan to continue to review all remaining laws, we do not believe assembling a committee is necessary.

Complaint Cases Referred to Outside Agencies:

Recommendation No. 7: The Unit should monitor complaint cases that are referred to the Attorney General's Office.

Response: Accepted

Once a case is referred to the Attorney General's Office, the Chief of their designated Unit reviews the case, assigns it, and the person who is assigned to conduct the investigation would communicate with this Department. Attorney General Patrick Lynch and the Administrator of the Labor Standards Program have conversed in this regard resulting in a representative of the Attorney General meeting with members of the Labor Standards Program to discuss a more effective way to address the cases being referred to their Department, with the understanding that they would come up with a solution to handling the cases referred to them by this Department.

Financial Control Procedures:

Recommendation No. 8: Duties surrounding the cash collection and the recording process within the Unit should be reassigned to segregate the various functions of these processes.

Response: Accepted

Another employee will immediately be designated to assist with the collection of cash, so that there are two (2) employees handling this responsibility, and alternating their duties, in order to be in conformance with said procedures.

Minimum Wage Act:

Recommendation No. 9: Determine if the provisions of RIGL 28-12-6 are practical, given the current labor climate and workforce composition of those occupations that are exempt from the Minimum Wage Act, and either implement the provisions or have the legislation introduced to repeal the statute.

Response: Accepted

The Labor Standards Program does not have any regulations in place pertaining to Minimum Wages. Labor Standards is presently in the process of reviewing these laws as well, and will make recommendations for changes within the next legislative year.

PREVAILING WAGE SECTION:

Violation/Complaint Case Hardcopy Case Files:

Recommendation No. 10: The hard copy case files should contain a planning memo, work program, and should also contain enough documentary evidence to support any conclusion and be indexed and bound.

Response: Accepted

We agree thoroughly with the Bureau of Audits findings in this regard that the hard copy case files should contain enough documentary evidence to support any conclusions and that the hard copies must be kept in a more orderly manner and we are working in that direction.

Recommendation No. 11: Ensure that all investigators are aware of the policies and procedures for investigating cases and the documentation required to be assembled for each case. Final approval of the investigations, which includes a final review of case files, should be included in the case file to ensure that all of the prescribed procedures and documents have been executed.

Response: Accepted

At the present time, Prevailing Wage has two (2) Examiners who are aware of the policies and procedures for investigating cases and the documentation that is required. Investigations are initiated by complaints on the part of employees of a particular company that is performing a prevailing wage job and not paying prevailing wage rates to their employees. That is what initiates an investigation by the Prevailing Wage Unit. On-site visits are made by the Examiners when they become aware of a probable Prevailing Wage violation. In those circumstances, an Examiner will visit the site, interview the laborers and conduct an audit of the payroll if they suspect noncompliance. With regard to a final review of a case file, the Examiners are required to enter all of the information that they compile into the computer files, from the commencement of a complaint through to the closure of the case. There have been times when the records have not been kept current -- we are aware of this, and the Examiners have been told that they must follow procedures in order that all of the case files remain current.

Penalties Assessed:

Recommendation No. 12: Document within each violation case file, the rationale for the particular level of penalty assessed against the particular violator.

Response: Accepted

Examiners will document the rationale for the size of a penalty assessed against a company that has been found in violation as well as an explanation whenever an inquiry is made in regard to a particular case.

Accrued Interest on Wages:

Recommendation No. 13: Ensure that employers who are directed to pay wages due to employees also pay the interest that is accrued up to the date of payment.

Response: Accepted

The recommendation of the Bureau of Audits is well taken and the Prevailing Wage Examiners have been instructed to direct employers to pay all interest which is due up to the date of the agreed payment.

Violator Sanctions:

Recommendation No. 14. Management should develop and implement procedures to ensure that violators of the Prevailing Wage provisions are prevented from bidding on or being awarded public works projects within the state for the time periods stipulated within the provisions of the law.

Response: Accepted

A more consistent communication system needs to be established between the Department of Labor and Training/Prevailing Wage Section and the State Purchasing Division with regard to the companies that have been found in violation of the Prevailing Wage Section of RIGL to prevent said companies from being allowed to bid on a Prevailing Wage job and from being awarded a Prevailing Wage contract job. This matter will be addressed immediately.

Field Investigations Documentation

Recommendation No. 15: The Prevailing Wage Program should include in its documentation of field investigations, the disposition of each investigation.

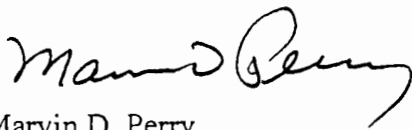
Response: Accepted

The disposition of each investigation will be included with the documentation of all field investigations.

With all of the above changes, the Labor Standards Program has either complied with or will comply with the recommendations of the Bureau of Audits.

Should you have any questions, or require any additional information, please do not hesitate to contact me.

Sincerely,



Marvin D. Perry,
Acting Director
RI Department of Labor & Training